

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

F.A.O.No.285 of 2006

A.S.139/2005 OF ADDITIONAL DISTRICT COURT (ADHOC-II), KOLLAM.
O.S.17/2004 OF THE COURT OF THE PRINCIPAL MUNSIF, KOLLAM.
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APPELLANT: RESPONDENT/PLAINTIFF:-

MATHAIKUTTY, AGED 55,
S/O. THOMMY, VATTAVILAPUTHEN VEEDU, NALLILACHERRY,
NEDUMPANA VILLAGE, KOLLAM.

BY ADV. SRI.RAJA VIJAYARAGHAVAN
SRI.M.T.SURESHKUMAR

RESPONDENT: APPELLANT/DEFENDANT:-

OMANA, AGED 47,
W/O. DIVAKARAN, KALLUVILA VEEDU, PULIYILA,
PALLIMON VILLAGE, KOLLAM TALUK.

BY ADV.SRI.K.SUBASH CHANDRA BOSE.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.Padmanabhan Nair,J.

F.A.O.No.285 of 2006

Dated, this the 7th day of March, 2007

JUDGMENT

The plaintiff in a suit for money is the appellant in this First Appeal from Order. He has filed the suit for realisation of Rs.25,000/- with interest. In the trial Court, the contention put forward by the respondent-defendant was that there was no borrowing. It was contended that she was a subscriber to a chit conducted by the appellant and she was the successful bidder. At the time of accepting the prized amount, she affixed a signature in a blank paper, which contained a 20 paise revenue stamp. The trial Court decreed the suit. Challenging that, the respondent filed an appeal before the lower appellate Court. The lower appellate Court set aside the judgment and decree and remanded the matter for fresh trial. Challenging the order of remand, the plaintiff has filed this appeal.

2. The three main points raised are that the lower appellate Court has wrongly cast the burden of proof on the plaintiff; that before the trial Court three issues were framed

after hearing both sides and the respondent had, at any point of time, raised a contention that issues framed are not sufficient or she is unable to put forward her defence because of the vagueness of the issue; and that the oral evidence of P.W.1 was misread and misconstrued by the lower appellate Court.

3. The judgment of the trial Court shows that the original defence put forward by the respondent was that at the time of receiving the prized chit amount conducted by the appellant, she affixed her signature on a 20 paise revenue stamp. At the time of oral evidence, her case was that the appellant has removed the twenty paise revenue stamp from the blank paper and affixed 2 one rupee stamps on that paper and some other person had forged her signature on those stamps. So, it is a case in which the respondent challenge the genuineness of the signature itself. When a person raises a specific contention that he/she is not the author of the disputed signature, the burden is on such party to prove the same. The opposite party had no burden to discharge in this regard.

4. Regarding the re-casting of issues, the trial Court shall consider the arguments of both sides and take a decision

whether any additional issues are to be framed in this case. Of course, the lower appellate Court had made an observation that there are some inconsistencies in the oral evidence of the plaintiff. When the lower appellate Court thought it fit to give an opportunity to the defendant, it ought not have made such an observation so as to prejudicially affect the plaintiff. So, that finding is vacated and there will be an open remand of the entire case. The trial Court shall try and dispose of the suit afresh in accordance with law, untrammelled by any observations made by the lower appellate Court in the remand order. It is made clear that there is no need for a *de novo* trial. If any one of the parties want to adduce additional evidence, they shall make a request to the trial Court and if such a request is made, the same shall be heard and disposed of on merits.

The appeal is disposed of as indicated above.

I.A.No.4540 of 2006 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-